

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.548 of 2005

Date of Decision: 16.11.2007

Harbans Kaur

...Appellant

Vs.

Mandeep Singh

...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.S.D.Sharma, Senior Advocate,
with Ms. Bindu Goel, Advocate,
for the appellant.

Mr.K.K.Garg, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

Present regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit filed by the plaintiff-appellant has been ordered to be dismissed.

The plaintiff brought a suit for declaration to the effect that the plaintiff-appellant was owner of half share of property of Babu Singh being the daughter. The suit was contested by the defendant respondent on the

ground that an unregistered Will dated 9.1.1999 was executed in his favour by late Babu Singh his grand-father bequeathing entire property in his favour.

On the pleadings of the parties, the following issues were framed by the learned trial court:-

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the injunction, as prayed for? OPP
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is liable to be dismissed for non-joinder and misjoinder of necessary parties? OPD
6. Relief.

Though no issue with regard to the validity of the Will was framed but the defendant led evidence to prove the same. Will dated 9.1.1999 was proved on record by examining the attesting witnesses of the Will who proved the due execution thereof.

Learned courts below on appreciation of evidence recorded a concurrent finding of fact that the Will was not surrounded by any suspicious circumstance and consequently issues No.1 and 2 were decided against the plaintiff-appellant.

Mr.S.D.Sharma, learned senior counsel for the appellant has challenged the judgments and decrees passed by the learned courts below primarily on the ground that the courts below were in error in not framing an issue with regard to the validity of the Will which prejudiced the case of the plaintiff-appellant as she could not lead requisite evidence on this point. The contention of the learned counsel for the appellant was that non-framing of an issue arising out of the pleadings of the parties would be a substantial question of law to be decided by this court as the learned trial court is under statutory duty to frame all the issues arising out of the pleadings of the parties.

The contention raised by Mr.Sharma, learned senior counsel appearing for the appellant that the learned trial court was bound to frame issues arising out of the pleadings of the parties cannot be disputed but at the same time once the parties were aware of their case set up by each other and have led evidence on the said point which has been considered by the learned courts below, the contention, cannot be a ground to upset the findings of the courts below in regular second appeal merely for want of an issue on the said point. The reading of the judgments of the courts below shows that the parties led their respective evidence to prove and disprove the Will and it was on appreciation of the evidence produced by the respective parties that the validity of the Will has been upheld.

Thus, concurrent findings of fact are not open to challenge in the regular second appeal before this court.

Even otherwise, this appeal raises no question of law much

much less substantial question of law for adjudication by this court.

Dismissed in limine.

16.11.2007
rp

(Vinod K.Sharma)
Judge